tributory negligence owes to the defendant no duty to act carefully. Indeed, it would appear to their Lordships that in cases relating to running-down accidents like the present such a duty exists. The proposition can be put even more broadly. Generally speaking, when two parties are so moving in relation to one another as to involve risk of collision, each owes to the other a duty to move with due care, and this is true whether they are both in control of vehicles, or both proceeding on foot, or whether one is on foot and the other controlling a moving vehicle. If it were not so, the individual on foot can never be sued by the owner of the vehicle for damage caused by his want of care in crossing the road, for he would owe to the plaintiff no duty to take care. Yet, such instances may easily occur, e.g. if the individual's rashness causes the vehicle to pull up so suddenly as to damage its mechanism, or as to result in following traffic running into it from behind, or, indeed, in physical damage to the vehicle itself by contact with the individual. When a man steps from the kerb into the roadway, he owes a duty to traffic which is approaching him with risk of collision to exercise due care...."

In the instant case, on being blinded by the glare of the headlights of the on-coming vehicle, it would be prudent for the plaintiff to slow down his speed considerably, or even to pull to the side for safety. In evidence, the plaintiff said that he proceeded on without taking any other action. As such, the plaintiff "did not in his own interest take reasonable care of himself and contributed, by his want of care, to his own injury."

In apportioning liability, I was of the opinion that the first defendant was 2/3 to blame and the plaintiff was 1/3 to blame for the accident. The plaintiff would be safe to proceed notwithstanding his eyes being blinded by the glare from the headlights of the on-coming vehicle had the first defendant parked his motor lorry on the side table or at least switched on the tail lights of the motor lorry which might be spotted a distance away. In terms of degree, the blameworthiness of the first defendant was higher than that of the plaintiff.

As a result of the accident the plaintiff lost consciousness and suffered the following injuries:

(a) Laceration on the left forehead of about 3½ inches extending to the left upper and lower eye-lids. Plaintiff could not open his left eye;

(b) Laceration of about 1 inch on the left upper lip;

(c) Laceration of about ½ inch on the lower lip;

(d) there was a puncture wound at the medial end of the left clavicle;

(e) there was superficial abrasion on the right anterior chest.

Surgery had to be performed on the plaintiff and the findings were:

(i) there was a laceration of about 3 inches on the superior surface of the liver on the right lobe and it was bleeding;

(ii) blood was also found in peritoreal cavity; and

(iii) there was a slight contusion of the greater curvature of the stomach.

It was necessary to evacuate the clots and repair the laceration on the liver. Double drains were inserted for this purpose.

The plaintiff was hospitalised for 14 days and then on being discharged was treated as an outpatient for 7 days.

Before the commencement of the trial, the learned counsel for the plaintiff reported, confirmed by the learned counsel for the defendants, that a sum of $200 had been agreed to constitute special damages except in relation to special damages for the loss of earning incurred by the plaintiff. In this regard, the plaintiff contended that he was earning wages of about $300 per month and that he was unable to work for 70 days. This contention was not seriously disputed and I would award special damages under this item, based on 100% liability on the defendants in a sum of

$$\frac{70 \times \$300}{30} = \$700.$$

I would award the following general damages, based on 100% liability on the defendants:

(a) Loss of consciousness	...	$ 500
(b) Lacerations, pain and sufferings	...	$3,000
(c) Injury to liver	...	$5,000
(d) Defective vision of left eye (as plaintiff not even advised to wear glasses to correct defect).	...	$3,000

Under the circumstances I would award a global sum of $11,500 as general damages based on 100% liability on the defendants.

Special damages would bear an interest at 3% per annum from date of accident till date of service of the writ and the general damages on interest of 6% per annum from date of service of the writ to date of judgment.

Costs to plaintiff.

Order accordingly.

Solicitors: *Murphy & Dunbar; Lovelace & Hastings.*

SINGAPORE AIRLINES LTD. v. CARDOSA

[A.C.J. (B.T.H. Lee J.) November 27, 1980]
[Kuala Lumpur — Civil Appeal No. 29 of 1979]

Employment — Contract — Excess leave claim against pilot — Late payment of bonus — Whether pilot entitled to bonus — "Functional crew member" explained — Pilots Agreement, 1971.

The appellant in this case appealed against the whole decision of the lower court. The respondent was a trainee cadet pilot employed by the Malaysia-Singapore Airlines Ltd. by a letter dated May 14, 1971. Consequent to MSA being re-structured the respondent was employed by the appellant by letter dated December 9, 1971, upon the same terms and conditions as contained in the letter of May 14, 1971. The appellants had appointed the respondent as cadet pilot with effect from August 23, 1972, and as second officer with effect from October 5, 1972 upon the terms and conditions as set out in the "Pilots Agreement" 1971. The respondent tendered his resignation as second officer with effect from June 10, 1974 and the appellants accepted the said resignation by letter dated June 8, 1974. The respondent was entitled to 42 days' paid leave and the appellants programmed the respondent to go on leave by posting his dates of leave on the block leave poster and by expressly and/or impliedly requiring him to take leave.

The appellants claimed that the lower court erred in law

by holding that (1) the appellants had no legal right to claim for excess leave taken by the respondent; (2) the respondent was not deprived of his entitlement to the bonus merely because the management decided to pay the bonus late; (3) the respondent became a functional crew member and was entitled to air-craft allowance.

Held, dismissing the appeal: (1) there was nothing in the Pilots Agreement, 1971 which indicated that any leave taken had to be paid back; in the present case no excess leave was taken. The respondent had taken leave which was his due and strictly in accordance with the directions of the appellants as set out in the leave roster;

(2) the respondent was entitled to his claim for bonus;

(3) the court agreed with the lower court's finding that the defendant became a functional crew member when he was given a licence whereby he became entitled to aircraft allowance.

CIVIL APPEAL.

Wilfred Abraham for the appellants.

Khaw Chay Tee for the respondent.

Cur. Adv. Vult.

B.T.H. Lee J.: This is an appeal by the appellants, Singapore Airlines Limited — the plaintiffs herein, against the whole of the decision of the Magistrate's Court at Kuala Lumpur.

The brief facts are that the Malaysia-Singapore Airlines Limited (briefly called "the MSA") employed the defendant/respondent as a trainee Cadet Pilot upon the terms and conditions contained in a letter dated May 14, 1971.

Consequent to the MSA being re-structured, the defendant applied to the plaintiffs for employment by letter dated December 1, 1971. The plaintiffs by letter dated December 9, 1971, accepted the defendant's application for employment and employed the defendant upon the same terms and conditions as contained in the said letter of May 14, 1971.

By letter dated August 25, 1972, the plaintiffs appointed the defendant as a Cadet Pilot with effect from August 23, 1972 upon the terms and conditions as set out in the said letter. The plaintiffs appointed the defendant as a Second Officer with effect from October 5, 1972 upon the terms and conditions as set out in the "Pilots Agreement, 1971".

The defendant tendered his resignation as a Second Officer with effect from June 10, 1974, and the plaintiffs accepted the said resignation by letter dated June 8, 1974.

The defendant was entitled to 42 days' paid leave. Due to the fact that there were an excess number of pilots in service, the plaintiffs programmed the defendant to go on leave by posting his dates of leave on the block leave roster and by expressly and/or impliedly requiring him to take leave.

There were rival claims, counter-claim and set-off by the parties in respect of aircraft type allowance and annual wage supplement/bonus.

Before this court, the judgment of the lower court has been attacked on four grounds, the first of which was abandoned.

I will now deal with the grounds of appeal in their order. The 2nd ground of appeal states:

"(2) The learned Magistrate erred in law by holding that the Appellants had no legal right to claim for excess leave taken by respondent."

The judgment of the court below on this point reads:

"From the evidence produced it is noted that the leave of the pilots in the employment of plaintiff was rostered and the pilots were obliged to take their leave as rostered failing which the leave would lapse. There is no evidence that in the event of excess leave taken by a pilot the employer, that is plaintiff, could claim back for excess leave taken. P2 the agreement did not contain any clause to that effect.

Defendant was entitled to leave which had been rostered and he took the leave as rostered. There was no evidence that the defendant himself applied for extra days. I therefore found that plaintiff had no legal basis to claim for excess leave taken in the absence of the employees having been informed either in writing or orally that they would have to pay back for excess leave taken.

In any event defendant only took the leave for which he was entitled and which had been rostered to him and thus accordingly I dismissed the claim of plaintiff in respect of the claim for excess leave taken."

It seems to me that there was abundant evidence on which the lower court could find in answer to the second ground of appeal. The relationship between the appellants and the respondent was at all material times governed by the terms and conditions set out in the Agreement made on June 30, 1971 between the MSA and the Malaysia-Singapore Airline Pilots' Association (hereinafter called "the Pilots Agreement").

Reference may be made to paragraph 3 of the statement of claim (which was admitted by paragraph 1 of defence), the terms of which are:

"3. By letter dated 14th day of May, 1971 from Malaysia Singapore Airlines Ltd. (hereinafter called MSA) to the defendant, MSA employed the defendant and the defendant accepted the appointment as a trainee Cadet Pilot upon the terms and conditions as contained in the said letter. — which (omitting the irrelevant parts) reads:

'Dear Mr. Cardosa,

I have pleasure in confirming that you have been appointed Second Officer, on six months' probation, with effect from 5 October, 1972.

2. Your salary with effect from 5 October, 1972 will be $750 per month. Your general conditions of service will be set out in the 'Pilots' Agreement, 1971'."

Clauses 7(1)(a), 7(3) and 7(4)(a) of First Schedule of the Pilots Agreement, 1971 are in these terms:

"7(1)(a) National pilots will be granted six weeks leave per annum.

7(3) A leave roster will be maintained by the Company to ensure, as far as possible, that pilots proceed on leave when due.

7(4)(a) Leave should be taken when it becomes due and will lapse unless the pilot has applied for leave and such application has not been approved by the Company or when the Company cannot grant such leave or when the pilot has applied for accumulation of leave and such application is approved by the Company."

With respect, I can find nothing in the Pilots Agreement, 1971 to lead me to think that any leave taken has to be paid back. Nor indeed is there any evidence of any oral agreement to that effect. The above facts have been reiterated in the evidence of Chew Bak Loong (PW1) and Ho Weng Toh (PW2) and are not in dispute.

Upon the evidence, the respondent was rostered for leave from December 31, 1973 till January 20, 1974 and from May 12, 1974 till June 1, 1974 on

the evidence of Ho Weng Toh (PW2).

If, however, respondent failed to take or had not taken or had elected not to take the leave rostered to him, it necessarily follows that the leave would have lapsed. In the event, he took the leave as rostered to him. By his letter dated June 6, 1974, he resigned from the MSA with effect from June 10, 1974.

On the basis, therefore, of the above directive, the respondent contends that the expression "excess leave" used by the appellants is nowhere defined in any of the documents and is, in my view, altogether fallacious. No excess leave whatever was taken. The respondent had taken leave which was his due and strictly in accordance with the directions of the appellants as set out in the leave roster.

I agree entirely with the learned Magistrate in the conclusion at which she had arrived. Even assuming that this court should find that there was a legal basis for the appellants' claim for excess leave, it is, as it seemed to me, to be the clearest case of estoppel possible. Estoppel arises from something by which the man who is estopped is prevented from alleging and proving the truth, he being bound by that which estops him from denying that certain allegations are true.

I will now deal with ground (3) of the Memorandum, which states:

"(3) The learned Magistrate erred in law and in fact by holding that merely because the management decided in 1974 to pay the bonus late did not deprive the respondent of his entitlement to the bonus."

The evidence in regard to this claim is contained in the evidence of PW1, PW3 and DW1 and the exhibit at page 12 of the ABD. In the circumstances, counsel for the appellants contended that:

"It is clear from the Agreement at pages 2 to 6 of the ABD that the question of wage supplement is not a right."

seems to me to be incorrect. It is quite plain that there is no provision whatsover in the Pilots Agreement, 1971 governing the question of wages supplement.

The learned Magistrate's ground for allowing the respondent's claim for wage supplement appears at paragraph 4 of page 34 of the Record. It reads:

"Financial year of plaintiff's Company according to PW3 the accounts supervisor was 1st April 1973 to 31st March 1974, and also according to him the annual wage supplement would normally be paid around April to June of any one year. If in 1974 the bonus had been paid during the months of April to May as in the previous years defendant would have been entitled to the bonus as he was then in the employment of plaintiff. Merely because the management decided in 1974 to pay the bonus late did not in my opinion deprive the defendant of his entitlement to the bonus."

It appears fairly obvious that the lower court relied, and in my view, correctly, upon the evidence of PW3, the appellants' Accounts Supervisor. PW3 said in evidence:

"I am aware of annual wage supplement. S.I.A. (the appellants) pays 13 months wages. It is equivalent to one month's salary. Monthly wage of defendant (respondent) was $1,050."

and he continued further down:

"If any member of the staff is in service on date of payment then he would be entitled to this payment. If they have left then they are not entitled. This policy comes from the management. It is not contained in the agreement. It is a unilateral policy decided by the management. The employees are not consulted. Financial year for the company is April to 31st March. For that year the financial year was April 1973 to March 31st 1974."

It can be readily seen from the evidence the financial year of the appellants for the year in question was from April 1973 to March 31, 1974. That being so, the respondent became entitled to the wage supplement/bonus from April 1, 1974.

The learned Magistrate therefore arrived at the following finding. It reads:

"Merely because the management decided in 1974 to pay the bonus late did not in my opinion deprive the defendant of his entitlement to the bonus."

In the whole of the circumstances of this case for the reasons stated, it seems clear that the respondent was and is entitled to his claim for wage supplement/bonus of one month's pay amounting to $1,050.

I now turn to the fourth and last ground of the appellants' Memorandum which states:

"(4) The learned Magistrate erred in fact by finding that the respondent became a functional crew member when he was given a licence (by the Department of Civil Aviation, Singapore) and consequently erred in law by holding that the respondent was entitled to the air-craft allowance."

Clause 8(3) of the Second Schedule of the Pilots Agreement, 1971 is in these terms:

"8(3) Aircraft type allowance is payable from the date a pilot is operating as a functional crew member on the new aircraft type...." (See page 6 of the ABD).

It is noteworthy that the expression "functional crew member" is not defined in the Pilots Agreement, 1971. It is therefore a question of law for the decision of the court and is not, with respect, a question of fact as stated by the appellants.

The respondent asserts that he became effectively a functional crew member when he received his Boeing 737 endorsement on February 23, 1973.

According to the Department of Civil Aviation of the Republic of Singapore, a pilot who has obtained the respondent's qualification could fly as a pilot-in-command of any aeroplane of which the maximum total weight authorised does not exceed 5,700 kg. and which is of a type specified in Part I (Group I) of the aircraft rating included in the licence, when the aeroplane is engaged in a flight for the purpose of public transport or aerial work. This is clearly set out in the letter from the Department of Civil Aviation dated July 1, 1977.

Attention is also drawn to page 3 of the Pilot's Licence (Exhibit "D3") under the heading "Ratings", which reads:

"Subject to the privileges and limitations specified herein, the holder of this licence may fly as pilot-in-charge of aeroplanes of types specified in GROUP 1 below, and as second pilot of aeroplanes of types specified in GROUP 2 below."

It is noteworthy that Boeing 737 is one of the aircraft under Group 1, which the respondent is licensed to fly.

The Department of Civil Aviation, Singapore being the governing and ruling body in so far as avia-

tion in Singapore is concerned, the respondent was on February 23, 1973 fully qualified and able to fly a Boeing 737 as a pilot-in-command.

This court is in entire agreement with the lower court's finding which reads:

"According to PW3, defendant was paid a B 737 aircraft allowance at the rate of $625 a month. Defendant became a functional crew member when he was given a licence whereby he became entitled to this aircraft allowance as explained by PW2."

It is the contention of the appellants that the respondent cannot become a functional crew member until he has completed the conversion training unilaterally laid down by it. They seek to draw an analogy to the transition from a law student to a practising advocate and solicitor.

Counsel for the respondent pointed out, and I think correctly, that the analogy cannot possibly apply. In law, the "conversion" training of having to read in chambers is a legal requirement laid down by the Legal Profession Act. The conversion training stipulated by the appellants is not, however, sanctioned by any law or a legal requirement, but is purely a unilateral scheme set down by the appellants.

These facts are not in dispute. The appellants' witness, Ho Weng Toh (PW2) had deposed to the following:

"At the time he (the respondent) obtains a licence he can fly a passenger craft but he has to be with another pilot. As from February 23, 1973 he could fly a passenger carrying plane and this will be on regular flights. Department of Civil Aviation issues the licence."

He had categorically stated, and I quote:

"Conversion training is not set down by the Department of Civil Aviation."

Upon the evidence, it follows that the respondent in effect became a functional crew member upon obtaining his licence on February 23, 1973 and was accordingly entitled to a flight allowance of $625 per month from February 23, 1973 to June 15, 1973.

In the circumstances such as I have described, the order of the learned Magistrate where the figure "$2,813" appears should be varied to read "2,354.09", i.e. the words and figures "the sum of $2,354.09" being aircraft type allowance from February 23, 1973 to June 15, 1973" shall be substituted for the words and figures "the sum of $2,813 being aircraft type allowance from March 29, 1973 to August 14, 1973" occurring in the 8th and 9th lines of the said Order.

The respondent has further agreed to abandon his claim for $728 in respect of meal allowance, and the said order shall be amended accordingly, by deleting the figures and words "and the sum of $728 being the outstanding balance of meal allowance between September 1973 and April 1974" occurring in the 9th, 10th and 11th lines, and the deletion of the word "both" occurring in the 11th line thereof.

The appeal by the appellants is hereby dismissed with costs to be assessed on the higher scale.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Allen & Gledhill.*

TEH HWA SEONG v. CHOP LIM CHIN MOH & ANOR.

[O.C.J. (Yusof Abdul Rashid J.) January 31, 1981]

[Johore Bahru — Civil Suit No. 110 of 1976]

Torts — Negligence — Road accident — Vehicle with label "Riding at your own risk" — Defence of Volenti Non Fit Injuria.

Damages — Quantum — 3½ cm. shortening of left leg — Multiple injuries — Global sum of $20,000 awarded.

The plaintiff in this case claimed for damages and loss for personal injuries sustained as a result of a motor accident caused by the alleged negligence of the second defendant. The plaintiff was a passenger in a motor lorry driven by the second defendant who was the servant of the owners of the lorry, the first defendants. The latter submitted that the plaintiff had been warned by the second defendant that he travelled in the motor lorry at his own risk and that the plaintiff was directed to a label "Riding At Your Own Risk" affixed near the passenger's seat. The defence plea was one of *non fit volenti injuria.*

As a result of the said accident, the plaintiff sustained the following injuries: (1) haematoma of the left thigh; (2) abrasions over the left forehead, the left forearm and the left loin; (3) a fracture of the lesser trochanter with a spiral fracture of the shaft of the left femur. He suffered shortening of the left lower limb by 3½ cm and marked restriction of movements of the left lower limb. There were superficial scars over the outer side of the left hip and left buttock area. The plaintiff had great difficulty in walking and he was not able to squat.

Held, allowing the plaintiff's claim: (1) to succeed in raising the defence of *volenti non fit injuria,* the defendants had to prove that the plaintiff had voluntarily and freely with full knowledge of the nature of the risk he ran impliedly agreed to incur it;

(2) in this case the plaintiff had not travelled in the lorry voluntarily and freely agreeing to undergo the risk that he might incur therefrom nor did the plaintiff know that he so travelled therein at his own risk. The first defendants were therefore vicariously liable for the negligence of the second defendant who was their employee at the material time;

(3) the plaintiff was awarded a global sum of $20,000 for the injuries sustained.

Cases referred to:-

(1) *Letang* v. *Ottawa Electric Rly. Co.* [1926] A.C. 725, 731, P.C.

(2) *Bennett* v. *Tugwell (An Infant)* [1971] 2 All E.R. 248.

CIVIL SUIT.

Upali Masacorale for the plaintiff.

Ng Kong Yeam for the defendants.

Cur. Adv. Vult.

Yusof Abdul Rashid J.: The plaintiff's claim is for damages and loss in respect of personal injuries sustained in a motor accident occurring due to the alleged negligence of the second defendant who was the servant of the first defendant. It was common ground that on January 11, 1975 about 3.35 p.m. the plaintiff was a passenger in a motor lorry No. NC 6527 owned by the first defendants and driven by the second defendant, the servant of the first defendants. At 3¾ milestone Jalan Cha'ah-Bekok, Johor, the lorry overturned.

The first defendants contended that the plaintiff had been warned by the second defendant that he travelled in the motor lorry at his own risk and that the plaintiff's attention was directed to a label "Riding